

Part 410 - Compliance with NEPA

Subpart A - Procedures for NRCS-Assisted Programs

410.0 Introduction.

(a) On August 29, 1979, the Natural Resources Conservation Service (NRCS) published final rules (7 CFR 650) for implementation of the National Environmental Policy Act (NEPA) in NRCS-assisted project actions. An updated version of the supplementary information presented in the NRCS rules (August 29, 1979) for compliance with the NEPA is presented here as introductory material for Subpart A of the manual. The NRCS-NEPA rule was effective on August 29, 1979, and adopted the Council on Environmental Quality (CEQ), November 29, 1978, National Environmental Policy Act Regulations (40 CFR 1500-1508) in total. The CEQ regulations were distributed with the final NRCS-NEPA procedure to all NRCS offices on September 18, 1979.

(b) The August 29, 1979 rule was a total revision of the previous procedures used by NRCS to comply with NEPA. The August 29, 1979 rule was expanded to include procedures for implementing NEPA in all NRCS-assisted programs and to comply with the regulations of CEQ, 40 CFR, Parts 1500-1508. Several data-gathering and inventorying programs of NRCS are categorically excluded so that neither an environmental assessment nor an environmental impact statement is normally required.

(c) NRCS introduced a new phrase, "environmental evaluation (EE)," to describe the interdisciplinary planning that is carried out before NRCS takes action in any program it administers. The phrase "environmental assessment (EA)" was formerly used by NRCS to describe this part of the planning process. The definition "environmental assessment" in the new CEQ regulations 40 CFR 1508.9 (Exhibit [§410.30\(b\) \(9\)](#)) depicts a document rather than a process, making it necessary for NRCS to use a new phrase to describe its environmental process.

(d) The NRCS-NEPA rule was developed in consultation with the staff of CEQ and is consistent with the NEPA procedures of the Secretary of Agriculture.

(e) During the 45-day commenting period for the proposed NRCS-NEPA rule (May 2, 1979), seven letters of comment were received. Two letters were from Federal agencies, one letter was from a state agency, two letters were from state conservation associations, and two letters were from individuals. All written comments were considered in developing the final rules that are shown this directive.

410.1 Purpose.

(a) This rule prescribes procedures by which NRCS is to implement the provisions of NEPA. The NRCS recognizes NEPA as the national charter for protection, restoration, and enhancement of the human environment. NEPA establishes policy, sets goals (Section 101), and provides means (Section 102) for carrying out this policy.

(b) The procedures included in this rule supplement CEQ's-NEPA regulations, 40 CFR Parts 1500-1508. CEQ regulations, that need no additional elaboration to address NRCS-assisted actions, are not repeated in this rule although the regulations are cited as

reference. The procedures include some overlap with CEQ regulations. This is done to highlight items of importance for NRCS. This does not supersede the existing body of NEPA regulations.

(c) These procedures provide that:

1. Environmental information is to be available to citizens before decisions are made about actions that significantly affect the human environment;
2. NRCS-assisted actions are to be supported to the extent possible by accurate scientific analyses that are technically acceptable to NRCS;
3. NRCS-prepared NEPA documents are to be available for public scrutiny; and
4. Documents are to concentrate on the issues that are timely and significant to the action in question rather than amassing needless detail.

(d) Procedures for implementing NEPA are designed to insure that environmental consequences are considered in decision making. They allow NRCS to assist individuals and non-Federal public entities to take actions that protect, enhance, and restore environmental quality.

(e) These procedures make possible the early identification of actions that have significant effects on the human environment to avoid delays in decision making.

410.2 Applicability.

This rule applies to all NRCS-assisted programs including the uninstalled parts of approved projects that are not covered by environmental documents prepared under previous rules for compliance with NEPA. It is effective on the date of publication of the final rule. NRCS is to consult with CEQ in the manner prescribed by 40 CFR 1506.11 if it is necessary to take emergency actions.

410.3 Policy.

(a) NRCS mission.

The NRCS mission, as stated in its NEPA rules, 7 CFR 650, August 29, 1979, is to provide assistance that will allow use and management of ecological, cultural, natural, physical, social, and economic resources by striving for a balance among use, management, conservation, and preservation of the Nation's natural resource base. The NRCS mission is reemphasized and expanded to carry out the mandate of Section 101(b) of NEPA, within other legislative constraints, in all its programs of Federal assistance. NRCS will continue to improve and coordinate its plans, functions, programs, and recommendations on resource use so that Americans, stewards of the environment for succeeding generations:

1. Can maintain safe, healthful, productive, and esthetically and culturally pleasing surroundings that support diversity of individual choices; and
2. Are encouraged to attain the widest range of beneficial uses of soil, water, and related resources without degradation to the environment, risk to health or safety, or other undesirable and unintended consequences.

(b) NRCS environmental policy.

NRCS is to administer Federal assistance within the following overall environmental policies:

1. Provide assistance to Americans that will motivate them to maintain equilibrium among their ecological, cultural, natural, physical, social, and economic resources by striving for a balance between conserving and preserving the Nation's natural resource base.
2. Provide technical and financial assistance through a systematic interdisciplinary approach to planning and decision making to insure a balance between the natural, physical, and social sciences.
3. Consider environmental quality equal to economic, social, and other factors in decision making.
4. Ensure that plans satisfy identified needs and at the same time minimize adverse effects of planned actions on the human environment through interdisciplinary planning before providing technical and financial assistance.
5. Counsel with highly qualified and experienced specialists from within and outside NRCS in many technical fields as needed.
6. Encourage broad public participation in defining environmental quality objectives and needs.
7. Identify and make provisions for detailed survey, recovery, protection, or preservation of unique cultural resources that otherwise may be irrevocably lost or destroyed by NRCS-assisted project actions, as required by Historic Preservation legislation and/or Executive Order.
8. Encourage local sponsors to review with interested publics the operation and maintenance programs of completed projects to insure that environmental quality is not degraded.
9. Advocate the retention of important farmlands and forest-lands, prime rangeland, wetlands, or other lands designated by state or local governments. Whenever proposed conversions are caused or encouraged by actions or programs of a Federal agency, licensed by or require approval by a Federal agency, or are inconsistent with local or state government plans, provisions are to be sought to insure that such lands are not irreversibly converted to other uses unless other national interests override the importance of preservation or otherwise outweigh the environmental benefits derived from their protection. In addition, the preservation of farmland in general provides the benefits of open space, protection of scenery, wildlife habitat, and in some cases, recreation opportunities and controls on urban sprawl.
10. Advocate actions that reduce the risk of flood loss, minimize effects of floods on human safety, health, and welfare, and restore and preserve the natural and beneficial functions and values of flood plains.

11. Advocate and assist in the reclamation of abandoned surface mined lands and in planning for the extraction of coal and other nonrenewable resources to facilitate restoration of the land to its prior productivity as mining is completed.
12. Advocate the protection of valuable wetlands, threatened and endangered animal and plant species and their habitats, and designated ecosystems.
13. Advocate the conservation of natural and man-made scenic resources to insure that NRCS-assisted programs or activities protect and enhance the visual quality of the landscape.
14. Advocate and assist in actions to preserve and enhance the quality of the Nation's waters. [<!--definitions-->](#)

410.4 Definition of terms.

Some terms defined in the NRCS-NEPA rule are presented here to improve the readability and understanding of this directive. In addition, in Subpart C, Exhibit [§410.30](#), the Terminology and Index section from the CEQ-NEPA rules is also presented for reference of other definitions.

(a) Channel realignment

Channel realignment includes the construction of a new channel or a new alignment and may include the clearing, snagging, widening, and/or deepening of the existing channel. (See [§410.27](#) (C) (2) (i) (F))

(b) Environmental assessment (EA)

(See Exhibit [§410.30\(b\)](#)).

1. An EA is a concise public document for which a Federal agency is responsible that:
 - (i) Briefly provides sufficient evidence and analysis for determining whether to prepare an EIS or a finding of no significant impact.
 - (ii) Aids an agency's compliance with the Act when no EIS is necessary.
 - (iii) Facilitates preparation of an EIS when one is necessary.
2. An EA includes brief discussions of the need for the proposal, alternatives as required by a section of the environmental impacts of the proposed action and alternatives, and a list of agencies and persons consulted.

(c) Environmental evaluation (EE)

The EE (formerly referred to by NRCS as an environmental assessment (EA)) is the part of planning that inventories and estimates the potential effects on the human environment of alternative solutions to resource problems. A wide range of environmental data together with social and economic information is considered in determining whether a proposed action is a major Federal action significantly affecting the human environment. The EE for a program, regulation, or individual action is used to determine the need for an EA or an EIS. It also aids in the consideration of alternatives and in the identification of available resources.

(d) Federally assisted actions

These actions are planned and carried out by individuals, groups, or local units of government largely on non-Federal land with technical and/or financial assistance provided by NRCS.

(e) Interdisciplinary planning

NRCS uses an interdisciplinary environmental evaluation and planning approach in which specialists and groups having different technical expertise act as a team to jointly evaluate existing and future environmental quality. The interdisciplinary group considers structure and function of natural resource systems, complexity of problems, and the economic, social, and environmental effects of alternative actions. Public participation is an essential part of effective interdisciplinary planning. Even if an NRCS employee provides direct assistance to an individual land user, the basic data used is a result of interdisciplinary development of guide and planning criteria.

(f) Nonproject actions

Nonproject actions consist of technical and/or financial assistance provided to an individual, group, or local unit of government by NRCS primarily through a cooperative agreement with a local conservation district, such as land treatment recommended in the Conservation Operations, Great Plains Conservation, Rural Abandoned Mine, and Rural Clean Water Programs. These actions may include consultations, advice, engineering, and other technical assistance that land users usually cannot accomplish by themselves. Nonproject technical and/or financial assistance may result in the land user installing field terraces, waterways, field leveling, on farm drainage systems, farm ponds, pasture management, conservation tillage, critical area stabilization, and other conservation practices.

(g) Notice of intent (NOI) (40 CFR 1508.22, Exhibit §[410.30 \(b\)](#))

A NOI is a brief statement inviting public reaction to the decision by the responsible Federal official to prepare an EIS for a major Federal action. The NOI is to be published in the Federal Register (FR), circulated to interested agencies, groups, individuals, and published in one or more newspapers serving the area of the proposed action.

(h) Project actions

A project action is a formally planned undertaking that is carried out within a specified area by sponsors for the benefit of the general public. Project sponsors are units of government having the legal authority and resources to install, operate, and/or maintain works of improvement.

(i) Record of Decision (ROD) (40 CFR 1505.2, Exhibit §[410.30 \(a\)](#))

A ROD is a concise written rationale by the responsible Federal official regarding implementation of a proposed action requiring an EIS. This was previously defined by NRCS as a Statement of Findings (SOF).

(j) Responsible Federal official (RFO)

The NRCS Chief is the RFO for compliance with NEPA regarding proposed legislation, programs, legislative reports, regulations, and program EIS's. NRCS state conservationists (STC's) are the RFO's for compliance with the provisions of NEPA in other NRCS-assisted actions.

(k) Significantly (40 CFR 1508.27, Exhibit §[410.30 \(b\)](#))

"Significantly" as used in NEPA requires considerations of both context and intensity:

1. Context

This means that the significance of an action must be analyzed in several contexts, such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, for a site-specific action, significance usually depends on the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

2. Intensity

This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:

- (i) Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.
- (ii) The degree to which the proposed action affects public health or safety.
- (iii) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.
- (iv) The degree to which the effects on the quality of the human environment are likely to be highly controversial.
- (v) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.
- (vi) The degree to which the action may establish a precedent for future actions with significant effects, or represents a decision in principle about a future consideration.
- (vii) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.
- (viii) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places (NRHP) or may cause loss or destruction of significant scientific, cultural, or historical resources.
- (ix) The degree to which the action may adversely affect an endangered or

threatened species or its habitat that has been determined to be critical under the Endangered Species Act (ESA) of 1973 as amended.

(x) Whether the action threatens a violation of Federal, state, or local law or requirements imposed for the protection of the environment.

(1) Finding of no significant impact (FNSI) (40 CFR 1508.13 Exhibit §[410.30 \(b\)](#))

"Finding of No Significant Impact" means a document by the Federal agency briefly presenting the reasons why an action not otherwise excluded (§1508.4, Exhibit 410.30(b)) will not have a significant effect on the human environment, and an EIS therefore will not be prepared. It shall include the EA, or a summary of it, and shall note any other environmental documents related to it (§1501.7(a)(5), see Exhibit 410.30(a)). If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference.

410.5 Environmental evaluation in planning.

(a) General.

Environmental evaluation (EE) integrates environmental concerns throughout the planning, installation, and operation of NRCS-assisted projects. The EE applies to all assistance provided by NRCS, but planning intensity, public involvement, and documentation of actions vary according to the scope of the action. NRCS begins consideration of environmental concerns when information gathered during the EE is used:

1. To identify environmental concerns that may be affected, gather baseline data, and predict effects of alternative courses of actions;
2. To provide data to applicants for use in establishing objectives commensurate with the scope and complexity of the proposed action;
3. To assist in the development of alternative courses of action; (40 CFR 1502.14). In NRCS-assisted project actions, nonstructural, water conservation, and other alternatives that are in keeping with the Water Resources Council's Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies are considered;
4. To perform other related investigations and analyses as needed, including economic evaluation, engineering investigations, etc.
5. To assist in the development of detailed plans for implementation and operation and maintenance.

(b) Procedures.

NRCS's Guide for Environmental Assessment (now called Evaluation) issued in March 1977, and published in the FR on August 8, 1977, provides guidance for conducting an EE (42 FR Parts 40123-40167).

(c) Decision points.

Figure 410-1 illustrates the decision points for compliance with NEPA in NRCS decision making.

410.6 Categorical exclusions.

(a) Some NRCS programs, or parts of programs, do not normally create significant individual or cumulative impacts on the human environment.

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Therefore, an EA or EIS is not needed. These are data gathering and interpretation programs and include:

1. Soil Survey - 7 CFR Part 611;
2. Snow Survey and Water Supply Forecasts - 7 CFR Part 612;
3. Plant Materials for Conservation - 7 CFR Part 613;
4. Inventory and Monitoring - Catalog of Federal Domestic Assistance - 10.908 and
5. River Basin Studies under Section 6 of Public Law (PL) 83-566 as amended 0 7 CFR Part 621.

(b) The environmental evaluation performed by the RFO when any new action under these programs is planned is to identify extraordinary circumstances that might lead to significant individual or cumulative impacts. Actions that have potential for significant impacts on the human environment are not categorically excluded.

410.7 When to prepare an EIS.

The following are categories of NRCS action used to determine whether or not an EIS is to be prepared:

(a) An EIS is required for:

1. Projects that include stream channel realignment or work to modify channel capacity by deepening or widening where significant aquatic or wildlife habitat exists. The EE will determine if the channel supports significant aquatic or wildlife habitat;
2. Projects requiring Congressional action;
3. Broad Federal assistance programs administered by NRCS when the EE indicates there may be significant cumulative impacts on the human environment (§410.7(c)); and
4. Other major Federal actions that are determined after the EE to affect significantly the quality of the human environment (§410.7 (b)). If it is difficult to determine whether there is a significant impact on the human environment, it may be necessary to complete the EE and prepare an EA in order to decide if an EIS is required.

(b) The RFO is to determine the need for an EIS for each action, program, or regulation. An EE, using a systematic interdisciplinary analysis and evaluation of data and information responding to the five provisions of Section 102(2)(c) of NEPA, will assist

the RFO in deciding if the action requires the preparation of an EIS. In analyzing and evaluating environmental concerns, the RFO will answer the following questions:

1. **Environmental impact.** Will the proposed action significantly affect the quality of the human environment (40 CFR 1508.14, Exhibit §[410.30\(b\)](#)). For example, will it significantly alter or destroy valuable wetlands, important farmlands, cultural resources, or threatened and endangered species? Will it affect social values, water quality, fish and wildlife habitats, or wilderness and scenic areas?
2. Adverse environmental effects that cannot be avoided. What are the important environmental amenities that would be lost if the proposed action were implemented?
3. **Alternatives.** Are there alternatives that would achieve the planning objectives but avoid adverse environmental effects?
4. Short-term uses versus long-term productivity. Will the proposed actions, in combination with other actions, sacrifice the enhancement of significant long-term productivity as a trade-off for short-term uses?
5. Commitment of resources. Will the proposed action irreversibly and irretrievably commit the use of resources such as important farmlands, wetlands, and fish and wildlife habitat?

(c) Criteria for determining the need for a program EIS:

1. A program EIS is required if the EE reveals that actions carried out under the program have individually insignificant but cumulatively significant environmental impacts.
2. A project EIS, in lieu of a program EIS, is required if the EE reveals that actions carried out under the program will have both individually and cumulatively significant environmental impacts (40 CFR 1508.7, Exhibit §[410.30\(b\)](#)).

(d) The RFO, through the process of tiering, is to determine if a site-specific EA or EIS is required for an individually significant action that is included in a program EIS.

410.8 When to prepare an Environmental Assessment (EA).

An EA is to be prepared for:

- (a) Land and water resource projects that are not included in §[410.7\(a\)\(1\)](#) through (4) for which state and local units of government receive Federal technical and financial assistance from NRCS (7 CFR Parts 620-623; and
- (b) Other actions not included in a program EIS nor categorically excluded that the EE reveals may be a major Federal action significantly affecting the quality of the human environment.

410.9 NEPA and interagency planning.

(a) Lead agency.

1. NRCS is to be the lead agency for actions under programs it administers. If the

actions affect more than one state, the NRCS Chief is to designate one NRCS state conservationist as the RFO.

NRCS normally takes the role of lead agency in actions that share program responsibilities among USDA agencies if NRCS provides the majority of funds for the actions. If the lead agency role is in question, the role of NRCS and other USDA agencies is to be determined by USDA.

If NRCS and Federal agencies outside USDA cannot agree on which will be the lead agency and which will be the cooperating agencies, the procedures in 40 CFR 1501.5(e) are to be followed.

NRCS, as lead agency, is to coordinate the participation of all concerned agencies in developing the EIS according to the CEQ provisions in 40 CFR 1501.6(a), (see Exhibit §[410.30\(a\)](#)).

(b) Cooperating agencies.

1. NRCS is to request, as appropriate, the assistance of cooperating agencies in preparing the EE. This assistance will broaden the expertise in the planning and help to avoid future conflict. NRCS is to request assistance in determining the scope of issues to be addressed and identifying the significant issues related to a proposed action from Federal agencies that have jurisdiction by law or special expertise.
2. NRCS is to act as a cooperating agency if requested. NRCS may request to be designated as a cooperating agency if proposed actions may affect areas of NRCS expertise, such as prime farmlands, soils, erosion control, and agricultural sources of nonpoint pollution. NRCS, as a cooperating agency, is to comply with the requirements of 40 CFR 1501.6(b) (see Exhibit §[410.30\(a\)](#)) to the extent possible depending on funds, personnel, and priority. If insufficient funds or other resources prevent NRCS from participating fully as a cooperating agency, NRCS is to request the lead agency to provide funds or other resources which will allow full participation.

(c) Scoping. See Exhibit §[410.30\(a\)](#).

1. NRCS is to use scoping to identify and categorize significant environment issues in its EE. Formalized scoping is used to insure that an analytical EIS can be prepared that will reduce paperwork and avoid delay. Scoping allows NRCS to obtain the assistance and consultation of affected agencies that have special expertise or legal jurisdiction in the proposed action. If early environmental evaluation identifies a need for an EIS, NRCS is to publish a NOI to prepare an EIS. The NOI is to request the assistance of all interested agencies, groups, and persons in determining the scope of the evaluation of the proposed action.
2. Normally a scoping meeting is held and Federal, state, or local agencies that have special expertise or legal jurisdiction in resource values that may be significantly affected are requested to participate. The scoping meeting will identify agencies that may become cooperating agencies.
3. In the scoping meeting, the range of actions, alternatives, and impacts to be evaluated and included in the EIS as defined in 40 CFR 1508.25 (Exhibit §[410.30](#)

(b)) are to be determined. Tiering as defined in 40 CFR 1508.28 (Exhibit §410.30(b)) may be used to define the relation of the proposed statement to other statements.

4. Periodic meetings of the cooperating agencies are to be held at important decisionmaking points to provide timely interagency, interdisciplinary participation.
5. Scoping is to include the items listed in 40 CFR 1501.7(a) and may also include any of the activities in 40 CFR 1501.7(b), (see Exhibit §410.30(a)). Appropriate, timely requests and notification are to be made to promote public participation in scoping in accordance with paragraph (d) of this section.
6. The RFO through the scoping process will set time and page limits as prescribed in 40 CFR 1501.8, (see Exhibit §410.30(a)). Time and page limits are established by NRCS in consultation with sponsors and others according to the projected availability of resources. The RFO is to make the applicant aware of the possible need for revising time and page limits because of changes in resources.

(d) Public participation.

1. General.

Public participation activities begin early in the EE and are to be appropriate to the proposed action. For example, extensive public participation activities are required in the implementation of new programs and project actions, but limited public participation is appropriate for nonproject technical and financial assistance programs on non-Federal land.

2. Early public involvement.

The public is to be invited and encouraged to participate in the early stages of planning, including the consideration of the potential effects of NRCS-assisted actions on significant environmental resources such as wetlands, flood plains, cultural values, endangered species, and important farmland.

3. Project activities.

The following are general considerations for providing opportunities for public participation:

(i) Identification of interested public.

The interested public consisting of, but not limited to individuals, groups, organizations, and government agencies are to be identified, sought out, and encouraged to participate in and contribute to interdisciplinary planning and environmental evaluation.

(ii) Public notices (40 CFR 1506.6, see Exhibit §410.30(a)). If the effects of an action are primarily of local concern, notice of each public meeting or hearing should be:

(A) Submitted to state and areawide clearinghouses pursuant to Executive Order 12372;

(B) Submitted to Indian tribes if they are interested;

(C) Published in local newspapers;

(D) Distributed through other local media;

(E) Provided to potentially interested community organizations including small business associations;

(F) Published in newsletters that may be expected to reach potentially interested persons;

(G) Mailed directly to owners and occupants of nearby or affected property; and

(H) Posted onsite and offsite in the area where the action is to be located.

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(iii) **State statutes.**

If official action by the local units of government cooperating in the proposal is governed by state statute, the public notice and mailing requirement of the statute is to be followed. If the effects of an action are of national concern, notice is to be published in the FR and mailed to national organizations reasonably expected to be interested.

(iv) **Public meetings.**

The RFO, after consultation with the sponsors, is to determine when public meetings or hearings are to be held. Public meetings may be in the form of a workshop, tour, open house, etc. Public involvement will include early discussion of flood-plain management and protection of wetlands, where appropriate. Environmental information is to be presented and discussed along with other appropriate information. To the extent practical, pertinent information should be made available before the meetings.

(v) **Documentation.**

The RFO is to maintain a reviewable record of public participation in the environmental evaluation process.

2. **Nonproject activities.**

Public participation in the planning and application of conservation practices with individual land users is accomplished primarily through conservation districts. These districts are governed by boards of supervisors, directors, commissioners, etc., who are elected and/or appointed to insure that soil, water, related resources, and environmental qualities in the district are maintained and improved. The public is to be encouraged to participate in the development of long-range district programs and annual district plans. The district keeps the public informed through public meetings, district newsletters, news stories, radio and television programs, and annual reports.

410.10 Adoption of an EIS prepared by a cooperating agency.

(a) If NRCS adopts an EIS prepared by another Federal or state agency, the RFO is to review the document to insure that it meets the requirements of the CEQ regulations and NRCS-NEPA procedures.

(b) If the actions included in the EIS are substantially the same as those proposed by NRCS, the RFO is to recirculate the EIS as "final." The final EIS is to include an appropriate explanation of the action. If these actions are not substantially the same, the EIS is to be supplemented and recirculated as a draft EIS. The RFO is to inform the preparing agency of the proposed action.

(c) If the adopted EIS is not final, if it is the subject of a referral under 40 CFR 1504, (see Exhibit §[410.30\(a\)](#)) or if the statement's adequacy is in litigation, the RFO is to include an appropriate explanation in the EIS.

(d) The RFO is to take appropriate action to inform the public and appropriate agencies of the proposed action.

410.11 Environmental documents.

(a) NRCS is to use the following documents in compliance with NEPA (see §[410.4](#) and [410.30\(b\)](#)):

1. Environmental Assessments (EA)
2. Environmental Impact Statements (EIS)
3. Notice of Intent (NOI)
4. Finding of No Significant Impact (FNSI)
5. Record of Decision (ROD)

(b) The format and content of each document is to be appropriate to the action being considered and consistent with the CEQ regulations.

1. To reduce duplication, NRCS may combine environmental documents with other planning documents of the same proposal, as appropriate. This may necessitate modifying the recommended CEQ format. If documents are combined, the information and sections required by the CEQ regulations (40 CFR 1502.10, see Exhibit §[410.30\(a\)](#)). The EIS should indicate those considerations, including factors not related to environmental quality, that are likely to be relevant to a decision.
2. The RFO is to establish the format and content of each document giving full consideration to the guidance and requirements of the CEQ regulations. The NRCS-NTC director is to provide guidance and concurrence on the format and content if the NRCS state conservationist is the RFO. The results of scoping are to determine the content of the EA or the EIS and the amount of detail needed to analyze the impacts.
3. In addition to the minimum requirements of the CEQ regulations (40 CFR 1502.10, see Exhibit §[410.30\(a\)](#)), EA's and EIS's are to include:

- (i) A brief description of public participation activities of agencies, groups, and individuals during the EE;
 - (ii) A description of the hazard potential of each alternative, including an explanation of the rationale for dam classification and the risk of dam failure from overtopping or other causes;
 - (iii) Information identifying any approved regional plans for water resource management in the study area (40 CFR 1506.2(d), see Exhibit §[410.30](#)(a)) and a statement on whether the proposed project is consistent with such plans;
 - (iv) All Federal permits, licenses, and other entitlements that must be obtained (40 CFR 1502.25(b), see Exhibit §410.30(a)); and
 - (v) A brief description of major environmental problems, conflicts, and disagreements among groups and agencies and how they were resolved. Unresolved conflicts and the NRCS's proposal for resolving the disagreements before the project is implemented are to be summarized.
1. **Letters of comment and responses (40 CFR 1503.4, 1502.9(b), see Exhibit §410.30 (a)).**

Letters of comment that were received and the responses to these comments are to be appended to the final EIS. Opposing views and other substantive comments that were not adequately discussed in the draft EIS are to be incorporated in the final EIS.
 2. **Appendix.**

The RFO may use an appendix to an EA or EIS. If an appendix is too voluminous to be circulated with the EIS, the RFO is to make it available upon request. If an appendix is included it is to:

- (i) Meet the requirements of 40 CFR 1502.18 (see Exhibit §[410.30](#)(a));
- (ii) Identify any methodologies used (40 CFR 1502.24, see §410.30(a)) and make explicit reference to other sources relied on for conclusions; and
- (iii) Briefly describe the relationship between the benefit cost analysis and any analyses of unquantified environmental impacts, values, and amenities. "For purposes of complying with the Act, the weighing of the merits or drawbacks of the various alternatives need not be displayed in a monetary cost benefit and should not be when these are important qualitative considerations" (40 CFR 1502.23, see Exhibit §410.30(a)).

410.12 NRCS decisionmaking.

(a) General.

The purpose of these procedures is to insure that environmental information is provided to decisionmakers in a timely manner. The NEPA process is a part of NRCS decisionmaking. The RFO is to insure that the policies and purposes of NEPA and CEQ regulations are complied with in NRCS decisionmaking by:

1. Including in all decision documents and supporting environmental documents a discussion of all alternatives considered in the decision. Alternatives to be considered in reaching a decision will be available to the public.
2. Submitting relevant environmental documents, comments, and responses with other decision documents through the review process.
3. Including in the record of formal rule making or adjudicatory proceedings relevant environmental documents, comments, and responses.
4. Providing for pre- and post-project monitoring (40 CFR 1505.2(c) and 1505.3, see Exhibit §[410.30\(a\)](#)) and evaluation in representative projects to insure that planning and evaluation procedures are performed according to sound criteria.

(b) Decision points in NRCS-assisted projects.

NRCS administers programs that may have a significant effect on the human environment. Program procedures incorporate provisions for compliance with NEPA and for providing environmental information to the public, other agencies, and decisionmakers in a timely manner. NRCS provides technical and financial assistance for projects under the Watershed Protection and Flood Prevention and the Resource Conservation and Development (RC&D) programs. These usually require the preparation of project EA's or EIS's. The major decisionmaking points and their relation to NEPA compliance are as follows:

1. For Watershed Protection and Flood Prevention projects:
 - (i) Application for assistance by the sponsoring local organization (SLO).
 - (ii) A preauthorization report identifying goals, alternatives, and effects of alternatives (including environmental impacts) prepared by the RFO and submitted to the applicant for decision. It is circulated to local, state, and Federal agencies and public comment is solicited. A decision is made to stop planning assistance or to develop a watershed plan.
 - (iii) Granting of planning authorization by the Chief. The RFO must provide an evaluation of the potential environmental impacts to obtain the authorization.
 - (iv) A watershed agreement between the SLO and NRCS. The agreement is based on a completed watershed plan and associated environmental documents, which have been adequately reviewed within NRCS.
 - (v) A project agreement between the SLO and the RFO executed after the NEPA process is complete and the watershed plan has been approved and final plans and specifications have been developed.
2. For RC&D measure plans:
 - (i) A request for assistance (measure proposal) is reviewed by the RC&D council to insure that the proposal is in accordance with the RC&D area plan. The proposal is then referred to NRCS.
 - (ii) A preliminary report is prepared by the RFO to identify goals, alternatives, and effects (including environmental impacts). The report is submitted to the sponsor for review. The sponsor may then apply to NRCS for planning assistance for measures considered in the preliminary report.
 - (iii) An authorization for planning assistance is granted by the RFO.

- (iv) The RC&D measure plan is signed by the applicant and the RFO after the preparation and review of the measure plan and environmental documents.
- (v) A project agreement is signed between the applicant and the RFO after the NEPA process is complete, the measure plan has been approved, and final plans and specifications have been prepared.

(c) Record of decision (ROD).

1. EIS's.

The RFO is to prepare a concise ROD for actions requiring an EIS. The ROD is to be prepared and signed by the RFO following the 30-day administrative action period initiated by the EPA's publication of the notice of availability of the final EIS in the FR. It is to serve as the public ROD as described in 40 CFR 1505.2 (see Exhibit §[410.30\(a\)](#)) of the CEQ regulations. The ROD is to be distributed to all who provided substantive comments on the draft EIS and all others who request it. A notice of availability of the ROD will be published in the FR and local newspaper(s) serving the project area. The RFO may choose to publish the entire ROD.

2. Environmental assessments (EA).

If the EA indicates that the proposed action is not a major Federal action significantly affecting the quality of the human environment, the RFO is to prepare a FNSI.

3. Distribution and publication of the FNSI (§1506.6(b), see Exhibit §[410.30\(a\)](#)).

The RFO is to distribute the FNSI to interested agencies and individuals. Notice of its availability is to be published in the FR and in one or more newspapers serving the area of the proposed action. Single copy requests for the document are to be filled without charge. A charge may be made for multiple copies. Implementing action is not to be initiated for 30 days after the notice of availability of the FNSI has been published in the FR.

(d) Changes in actions.

When it appears that a project or other action needs to be changed, the RFO will perform an EE of the authorized action before making a change.

410.13 Review and comment.

In addition to the requirements of 40 CFR 1503, 1506.1 and 1506.11, (See Exhibit §[410.30\(a\)](#)) NRCS will take the following steps in distributing EIS's for review and comment:

(a) Draft EIS's.

Five copies of the draft EIS are to be filed by the RFO with the Office of Federal Activities, Environmental Protection Agency (EPA), West Tower Room 537 (Mail Code A-104), 401 M Street S.W., Washington, D.C. 20460. At the same time, the RFO is to send copies of the draft EIS to the following:

1. Other Federal agencies.

The regional office of EPA and other agencies that have jurisdiction by law or special expertise with respect to any environmental effect, other Federal agencies (including appropriate field and regional offices), and affected Indian tribes.

2. State and local agencies.

Through its system of state and areawide clearinghouses, provides a means for obtaining the views of state and local environmental agencies that can assist in the preparation and review of EIS's.

3. Organizations, groups, and individuals.

A copy of the draft EIS is to be sent to the appropriate official of each organization or group and each individual of the interested public ([410.9\(d\)](#) (3) (i)) and to others as requested. A charge may be made for multiple copy requests.

(b) Time period for comment.

The time period for review ends 45 days after the date EPA publishes the notice of public availability of the draft in the FR. A 15-day extension of time for review and comment is to be considered by the RFO when such requests are submitted in writing. If neither comments nor a request for an extension is received at the end of the 45-day period, it is to be presumed that the agency or party from whom comments were requested has no comments to make.

(c) News release.

In addition to the notice of availability published in the FR by EPA, the RFO is to announce the availability of the draft EIS in one or more newspapers serving the area.

(d) Revising a draft EIS.

If significant changes in the proposed action are made as a result of comments on the draft EIS, a revised draft EIS may be necessary. The revised draft EIS is to be recirculated for comment in the same manner as a draft EIS.

(e) Final EIS's.

After the review period for the draft EIS, the RFO is to prepare a final EIS, making adjustments where necessary by taking into consideration and responding to significant comments and opposing viewpoints received on the draft EIS. The following steps are to be taken in filing and distributing the final EIS:

1. Letters of comment are to be appended to the final EIS. If numerous repetitive responses are received, summaries of the repetitive comments and a list of the groups or individuals who commented may be appended in lieu of the actual letter.
2. The RFO is to send five copies of the final EIS to EPA's Office of Environmental Review, and to each state and Federal agency, organization, group, and individual who commented on the draft EIS. Requests for single copies of the final EIS will be provided without charge. A charge may be made for multiple copy requests.

3. During the 30-day administrative action period noted in §[410.12\(c\)](#), NRCS will make its final EIS available to the public (40 CFR 1506.10, see Exhibit §[410.30\(a\)](#)).

(f) Supplements to EIS's.

1. If NRCS determines that it is necessary to clarify or amplify a point of concern raised after the final EIS is filed appropriate clarification or amplification is to be sent to EPA with information copies furnished to those who received copies of the final EIS. The waiting periods do not apply.
2. If the RFO determines that the final EIS or supplement to the original EIS previously filed becomes inadequate because of a major change in the plan for the proposed action that significantly affects the quality of the human environment a new EIS is to be prepared filed and distributed as described in this section.